

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JANNA MAREE PERRIGAN,

Plaintiff,

v.

SOCIAL SECURITY ADMINISTRATION,

Defendant.

Case No. 3:21-CV-00424

Judge Aleta A. Trauger
Magistrate Judge Alistair E. Newbern

To: The Honorable Aleta A. Trauger, District Judge

REPORT AND RECOMMENDATION

Plaintiff Janna Maree Perrigan has filed a motion for an award of attorney's fees pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. (Doc. No. 32.) The Social Security Administration does not oppose payment of the award in the full amount requested by Perrigan. (Doc. No. 34.) The Magistrate Judge will therefore recommend that Perrigan's motion (Doc. No. 32) be granted.

I. Factual and Procedural Background

Perrigan initiated this action on May 28, 2021, seeking review of an administrative law judge's decision to deny her Supplemental Security Income (SSI) benefits. (Doc. No. 1.) Perrigan filed a timely motion for judgment on the administrative record on January 12, 2022.¹ (Doc. No. 27.) On January 26, 2022, the Social Security Administration filed an unopposed motion for entry of judgment under sentence four of 42 U.S.C. § 405(g). (Doc. No. 28.) The District Judge granted

¹ The Magistrate Judge granted two unopposed motions to extend the deadline for Perrigan to file a motion for judgment on the administrative record. (Doc. Nos. 24, 26.)

that motion, reversing the decision of the administrative law judge and remanding the action for additional findings, evidence, and evaluation. (Doc. No. 30.) Final judgment entered on January 28, 2022. (Doc. No. 31.)

Perrigan moved for attorney's fees on April 25, 2022. (Doc. No. 32.) The Social Security Administration filed a response stating that it did not oppose Perrigan's motion on May 5, 2022. The matter is now ripe for decision and has been referred to the Magistrate Judge for report and recommendation pursuant to Federal Rule of Civil Procedure 72 and 28 U.S.C. § 636(b)(1). (Doc. No. 33.)

II. Legal Standard

The Equal Access to Justice Act directs that a court "shall award to a prevailing party other than the United States fees and other expenses" in civil actions including "proceedings for judicial review of agency action, brought by or against the United States . . . unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). The court has "broad discretion" to determine whether fees should be awarded under the statute. *Miller v. Berryhill*, 393 F. Supp. 3d 738, 742 (M.D. Tenn. 2019) (citing *DeLong v. Comm'r of Soc. Sec. Admin.*, 748 F.3d 723, 725 (6th Cir. 2014)).

III. Analysis

Perrigan supports her motion with an affidavit from her counsel of record, Melissa Palmer. (Doc. No. 32-1.) Palmer's affidavit notes the statutory fee rate of \$125.00 per hour under the EAJA and states that, adjusted to reflect a cost-of-living increase, the appropriate attorney hourly rate in this case is \$214.29 per hour. (Doc. No. 32-2.) Palmer requests a rate of \$100.00 per hour for paralegal time. Palmer documents 19.8 hours of attorney time at the adjusted EAJA rate (\$4242.94) and 5.8 hours of paralegal time at \$100.00 per hour (\$580.00), for a total requested award of \$4,822.94. (Doc. No. 32-1.)

The Social Security Administration “has no objection” to Perrigan’s requested award in the amount of \$4,822.94. (Doc. No. 34.) The Administration notes that the fee award is payable to Perrigan “and may be subject to offset to satisfy a pre-existing debt that the litigant owes to the United States.” (*Id.*) Perrigan does not contest that the fee award may be subject to offset (Doc. No. 32-1) and has submitted an “affirmation and waiver of direct payment of EAJA fees” in which she waives direct payment of the fees and assigns payment directly to Palmer. (Doc. No. 32-6.)

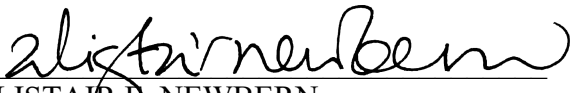
It thus appears that there is no disagreement between the parties that an award of attorney’s fees is appropriate under the EAJA and that the amount of the award should be \$4,822.94.

IV. Recommendation

The Magistrate Judge RECOMMENDS that Perrigan’s motion for attorney’s fees (Doc. No. 32) requesting payment for 19.8 hours of attorney time at the rate of \$214.29 per hour and 5.8 hours of paralegal time at the rate of \$100.00 per hour for a total award of \$4,822.94 be GRANTED and that the award be payable by the Social Security Administration, subject to offset to satisfy any pre-existing debt that Perrigan owes to the United States.

Any party has fourteen days after being served with this Report and Recommendation to file specific written objections. Failure to file specific objections within fourteen days of receipt of this report and recommendation can constitute a waiver of appeal of the matters decided. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Cowherd v. Million*, 380 F.3d 909, 912 (6th Cir. 2004). A party who opposes any objections that are filed may file a response within fourteen days after being served with the objections. Fed. R. Civ. P. 72(b)(2).

Entered this 5th day of July, 2022.


ALISTAIR D. NEWBERN
United States Magistrate Judge